

AMENDED IN ASSEMBLY MARCH 1, 2016
AMENDED IN ASSEMBLY AUGUST 18, 2015
AMENDED IN SENATE JUNE 2, 2015
AMENDED IN SENATE APRIL 29, 2015
AMENDED IN SENATE APRIL 27, 2015
AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 286

Introduced by Senator Hertzberg

February 19, 2015

An act to amend Section 365.1 of, to add Section 395.5 to, and to add and repeal Section 769.1 of, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 286, as amended, Hertzberg. Electricity: direct transactions.

The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. Existing law, enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law suspended the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, as defined, to acquire service through a direct

transaction until the Department of Water Resources no longer supplies electricity under that law. Existing law continues the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions. Existing law requires the commission to authorize direct transactions for nonresidential end-use customers subject to a reopening schedule that will phase in over a period of not less than 3 years and not more than 5 years, and is subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation.

The California Renewables Portfolio Standard Program requires a retail seller, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, meeting specified portfolio content categories.

This bill would require the commission to adopt and implement a schedule that implements a 2nd phase-in period for expanding direct transactions for individual retail nonresidential end-use customers over a period of not more than 3 years, raising the allowable limit of kilowatthours that can be supplied by other providers in each electrical corporation's distribution service territory by that electrical corporation's share of an aggregate of 8,000 gigawatthours, apportioned as specified. The bill would require that ~~at least~~ 75% of an electric service provider's retail sales associated with each 2nd phase direct transaction *to* be procured from eligible renewable energy resources *during 2016, increasing to 100% by December 31, 2020*, and would require the commission to enforce the bill's renewables procurement requirements as part of the California Renewables Portfolio Standard Program. The bill would require nonresidential retail end-use customers engaging in direct transactions to be responsible for their proportionate share of the costs of specified programs. The bill would require that an electrical corporation continue to construct, own, and operate distribution system equipment, as specified, and continue to provide support functions, as specified, through its own employees, except that construction of distribution system equipment and line clearance tree trimming may be performed under contract. The bill would prohibit an electric service

provider from offering *full* consolidated billing beginning January 1, 2016.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the operation of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares all of the~~
2 ~~following:~~
3 ~~(a) As the state's electrical system evolves to include more~~
4 ~~electricity generated by eligible renewable energy resources and~~
5 ~~distributed generation, electrical corporations must continue to~~
6 ~~facilitate safe and reliable transactions for electricity. Whether it~~
7 ~~comes from efficient natural gas powerplants, large wind or solar~~
8 ~~facilities, or customer-owned generation, including rooftop~~
9 ~~photovoltaics, fuel cells, or combined heat and power systems, the~~
10 ~~role of electrical corporations will be to ensure that electricity~~
11 ~~moves from suppliers to customers. In effect, the electrical~~
12 ~~corporations will become transmission and distribution companies,~~
13 ~~connecting customers with the electrical mix they want when and~~
14 ~~where they need it.~~
15 ~~(b) California already has a few examples for this business~~
16 ~~model, including community choice aggregation and direct access.~~
17 ~~Direct access allows a customer to receive electricity through a~~
18 ~~direct transaction with an electric service provider, rather than~~
19 ~~from the electrical corporation. The electricity is delivered over~~
20 ~~the electrical corporation's transmission and distribution grid and~~

~~1 the direct access customer pays the utility for providing
2 transmission and distribution service.~~

~~3 (e) Direct access was suspended in California in 2001, despite
4 not being a contributing component to the market manipulation,
5 blackouts, and price spikes that led to the energy crisis of 2000–01.
6 In 2010, the right of individual retail nonresidential end-use
7 customers to acquire electric service through a direct transaction
8 was reopened, but subject to limitations on the amount of electricity
9 that could be delivered through those transactions.~~

~~10 (d) Direct access customers currently pay charges for electrical
11 grid maintenance and pay nonbypassable charges on the
12 distribution of electricity to support public purpose programs,
13 including the California Alternate Rates for Energy program, which
14 supports affordable electric service for low-income customers, and
15 energy efficiency programs. Other providers of electric service,
16 including electric service providers and community choice
17 aggregators, are required to follow the same laws, rules, and
18 regulations as electrical corporations with respect to resource
19 adequacy (Section 380 of the Public Utilities Code), procurement
20 of electricity pursuant to the California Renewables Portfolio
21 Standard Program (Article 16 (commencing with Section 399.11)
22 of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code),
23 and for reducing emissions of greenhouse gases pursuant to the
24 California Global Warming Solutions Act of 2006 (Division 25.5
25 (commencing with Section 38500) of the Health and Safety Code).~~

~~26 (e) The Public Utilities Commission is required to ensure local
27 area reliability needs for the benefit of both bundled and unbundled
28 electric service customers. If the commission determines that new
29 resources are needed for reliability, the costs are to be shared
30 equitably, on a fully nonbypassable basis, amongst all customers,
31 whether the customer receives their electricity from the electrical
32 corporation, a community choice aggregator, or an electric service
33 provider. The cost allocation mechanism ensures that there is no
34 cost shift to bundled customers of the electrical corporation.~~

~~35 (f) A growing number of businesses are recognizing the
36 importance of managing their energy supplies and are seeking
37 more control over their energy management decisions. Many of
38 these businesses also want options to contract for electricity, with
39 up to 100 percent of that electricity coming from eligible renewable
40 energy resources. However, because of the statutory limitations~~

1 placed upon direct transactions, most businesses lack the means
2 and necessary tools to make cost-effective energy decisions, which
3 makes California less business friendly than other states with more
4 direct access options.

5 (g) ~~Given high demand for direct transactions, it is in the interest~~
6 ~~of the state to expand the right to direct access opportunities,~~
7 ~~especially to provide options for acquiring electricity from~~
8 ~~renewable sources of generation.~~

9 **SEC. 2.**

10 *SECTION 1.* Section 365.1 of the Public Utilities Code is
11 amended to read:

12 365.1. (a) Except as expressly authorized by this section, and
13 subject to the limitations in subdivisions (b) and (c), the right of
14 retail end-use customers pursuant to this chapter to acquire service
15 from other providers is suspended until the Legislature, by statute,
16 lifts the suspension or otherwise authorizes direct transactions. For
17 purposes of this section, “other provider” means any person,
18 corporation, or other entity that is authorized to provide electric
19 service within the service territory of an electrical corporation
20 pursuant to this chapter, and includes an aggregator, broker, or
21 marketer, as defined in Section 331, and an electric service
22 provider, as defined in Section 218.3. “Other provider” does not
23 include a community choice aggregator, as defined in Section
24 331.1, and the limitations in this section do not apply to the sale
25 of electricity by “other providers” to a community choice
26 aggregator for resale to community choice aggregation electricity
27 consumers pursuant to Section 366.2.

28 (b) (1) During the first phase-in period for expanding access
29 to direct transactions, the commission shall allow individual retail
30 nonresidential end-use customers to acquire electric service from
31 other providers in each electrical corporation’s distribution service
32 territory, up to a maximum allowable total kilowatthours annual
33 limit. During this first phase-in period for expanding access to
34 direct transactions, the maximum allowable annual limit shall be
35 established by the commission for each electrical corporation at
36 the maximum total kilowatthours supplied by all other providers
37 to distribution customers of that electrical corporation during any
38 sequential 12-month period between April 1, 1998, and the
39 effective date of this section. Within six months of the effective
40 date of this section, or by July 1, 2010, whichever is sooner, the

1 commission shall adopt and implement a reopening schedule that
2 commences immediately and will phase in the allowable amount
3 of increased kilowatthours over a period of not less than three
4 years, and not more than five years, raising the allowable limit of
5 kilowatthours supplied by other providers in each electrical
6 corporation's distribution service territory from the number of
7 kilowatthours provided by other providers as of the effective date
8 of this section, to the maximum allowable annual limit for that
9 electrical corporation's distribution service territory. The
10 commission shall review and, if appropriate, modify its currently
11 effective rules governing direct transactions, but that review shall
12 not delay the start of the phase-in schedule.

13 (2) The commission shall adopt and implement a second direct
14 transactions reopening schedule that commences January 1, 2016,
15 and phases in new direct transactions for individual retail
16 nonresidential end-use customers over a period of not more than
17 three years, raising the allowable limit of kilowatthours that can
18 be supplied by other providers in each electrical corporation's
19 distribution service territory by that electrical corporation's
20 proportionate share of an aggregate of 8,000 gigawatthours,
21 apportioned to each electrical corporation based upon its share of
22 retail sales. For each electric service provider, ~~400~~ 75 percent of
23 retail sales associated with each direct transaction under this
24 paragraph shall be procured from eligible renewable energy
25 ~~resources~~; *resources during 2016. Each electric service provider*
26 *shall make reasonable progress in each intervening year so that*
27 *100 percent of retail sales associated with each direct transaction*
28 *under this paragraph shall be procured from eligible renewable*
29 *energy resources by December 31, 2020.* Procurement of eligible
30 renewable energy resources in excess of the renewable portfolio
31 standard shall be subject to the same ~~minimum-product portfolio~~
32 content requirements specified in Section 399.16 for procurement
33 credited toward each renewable portfolio standard compliance
34 period. The commission shall enforce the eligible renewable energy
35 resource procurement requirements of this section as part of the
36 California Renewables Portfolio Standard Program (Article 16
37 (commencing with Section 399.11)). ~~The commission shall ensure~~
38 ~~that retail sales associated with direct transactions do not contribute~~
39 ~~to resource curtailment or over-generation.~~

1 (3) *The commission shall work with the Independent System*
2 *Operator to ensure that the grid continues to operate reliably as*
3 *the reopening schedule described in paragraph (2) is implemented.*

4 (c) Once the commission has authorized additional direct
5 transactions pursuant to subdivision (b), it shall do all of the
6 following:

7 (1) Ensure that other providers are subject to the same
8 requirements that are applicable to the state's three largest electrical
9 corporations under any programs or rules adopted by the
10 commission to implement the resource adequacy provisions of
11 Section 380, the renewables portfolio standard provisions of Article
12 16 (commencing with Section 399.11), and the requirements for
13 the electricity sector adopted by the State Air Resources Board
14 pursuant to the California Global Warming Solutions Act of 2006
15 (Division 25.5 (commencing with Section 38500) of the Health
16 and Safety Code). This requirement applies notwithstanding any
17 prior decision of the commission to the contrary.

18 (2) (A) Ensure that, in the event that the commission authorizes,
19 in the situation of a contract with a third party, or orders, in the
20 situation of utility-owned generation, an electrical corporation to
21 obtain generation resources that the commission determines are
22 needed to meet system or local area reliability needs for the benefit
23 of all customers in the electrical corporation's distribution service
24 territory, the net capacity costs of those generation resources are
25 allocated on a fully nonbypassable basis consistent with departing
26 load provisions as determined by the commission, to all of the
27 following:

28 (i) Bundled service customers of the electrical corporation.

29 (ii) Customers that purchase electricity through a direct
30 transaction with other providers.

31 (iii) Customers of community choice aggregators.

32 (B) If the commission authorizes or orders an electrical
33 corporation to obtain generation resources pursuant to subparagraph
34 (A), the commission shall ensure that those resources meet a system
35 or local reliability need in a manner that benefits all customers of
36 the electrical corporation. The commission shall allocate the costs
37 of those generation resources to ratepayers in a manner that is fair
38 and equitable to all customers, whether they receive electric service
39 from the electrical corporation, a community choice aggregator,
40 or an electric service provider.

(C) The resource adequacy benefits of generation resources acquired by an electrical corporation pursuant to subparagraph (A) shall be allocated to all customers who pay their net capacity costs. Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource. An energy auction shall not be required as a condition for applying this allocation, but may be allowed as a means to establish the energy and ancillary services value of the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph, and the allocation of the net capacity costs of contracts with third parties shall be allowed for the terms of those contracts.

(D) It is the intent of the Legislature, in enacting this paragraph, to provide additional guidance to the commission with respect to the implementation of subdivision (g) of Section 380, as well as to ensure that the customers to whom the net costs and benefits of capacity are allocated are not required to pay for the cost of electricity they do not consume.

(3) Ensure that customers of other providers are responsible for their proportionate share of the costs of programs authorized pursuant to Sections 379.5 and 381.

(d) (1) If the commission approves a centralized resource adequacy mechanism pursuant to subdivisions (h) and (i) of Section 380, upon the implementation of the centralized resource adequacy mechanism the requirements of paragraph (2) of subdivision (c) shall be suspended. If the commission later orders that electrical corporations cease procuring capacity through a centralized resource adequacy mechanism, the requirements of paragraph (2) of subdivision (c) shall again apply.

(2) If the use of a centralized resource adequacy mechanism is authorized by the commission and has been implemented as set forth in paragraph (1), the net capacity costs of generation resources that the commission determines are required to meet urgent system or urgent local grid reliability needs, and that the commission authorizes to be procured outside of the Section 380 or 454.5 processes, shall be recovered according to the provisions of paragraph (2) of subdivision (c).

(3) Nothing in this subdivision supplants the resource adequacy requirements of Section 380 or the resource procurement procedures established in Section 454.5.

(e) The commission may report to the Legislature on the efficacy of authorizing individual retail end-use residential customers to enter into direct transactions, including appropriate consumer protections.

~~SEC. 3.~~

SEC. 2. Section 395.5 is added to the Public Utilities Code, to read:

395.5. Beginning January 1, 2016, no electric service provider shall offer *full* consolidated billing. *Only the electrical corporation shall calculate the electrical corporation's charges.*

~~SEC. 4.~~

SEC. 3. Section 769.1 is added to the Public Utilities Code, to read:

769.1. (a) *It is the intent of the Legislature to maintain the safety and reliability of the distribution grid to ensure California can accommodate widespread distributed energy resources.*

(b) For purposes of this section, the following terms have the following meanings:

(1) "Distribution system equipment" means the portions of the electric delivery system beginning with equipment that operates at voltages lower than that controlled by the Independent System Operator up to and including a customer's electric meter.

(2) "Distribution system support functions" means the functions currently provided by an electrical corporation, including, but not limited to, billing, customer service, call centers, other support services, and line clearance tree trimming.

~~(b)~~

(c) An electrical corporation shall continue to construct, own, and operate distribution system equipment, and shall continue to provide distribution system support functions directly with their own employees, except that construction of distribution system equipment and line clearance tree trimming may be performed under a contract between the electrical corporation and another entity.

(d) *This section does not prohibit customer or third-party owned or operated distributed generation equipment or energy storage equipment on either of the following:*

1 (1) *The customer side of the meter.*

2 (2) *The utility side of the meter if that equipment is either under*
3 *contract to the electrical corporation or under an interconnection*
4 *tariff.*

5 ~~(e)~~

6 (e) Before January 1, 2021, the commission shall not adopt any
7 decision inconsistent with subdivision-~~(b)~~ (c).

8 ~~(d)~~

9 (f) This section shall remain in effect only until January 1, 2021,
10 and as of that date is repealed.

11 ~~SEC. 5.~~

12 SEC. 4. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.